

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TIMOTHY WILLIAMS,  
Plaintiff

v.

TABB BICKELL, ET AL.,  
Defendants

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CIVIL ACTION NO. 12-CV-1523

(Judge Nealon)

(Magistrate Judge Blewitt)

**MEMORANDUM**

On August 6, 2012, Plaintiff, an inmate at the State Correctional Institution in Huntingdon, Pennsylvania ("SCI-Huntingdon") filed, through counsel, this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). The complaint alleged that Plaintiff was denied proper medical care at SCI-Huntingdon. (Id.). Magistrate Judge Thomas M. Blewitt screened the complaint pursuant to 28 U.S.C. § 1915(A). On August 17, 2012, Magistrate Judge Blewitt issued a Report and Recommendation ("R&R") recommending that the complaint be dismissed in part and that Plaintiff be allowed to file an amended complaint as to certain claims. (Doc. 4). Instead of filing objections to the R&R, Plaintiff filed an amended complaint on August 30, 2012. (Doc. 5). He also filed a motion for preliminary injunction. (Doc. 6).

On October 29, 2012, Defendant filed a motion to dismiss the amended complaint for failure to state a claim. (Doc. 10) (citing FED. R. CIV. P. 12(b)(6)). The following day, Plaintiff filed a notice of voluntary dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure, stating that Plaintiff has now received the appropriate medical care. (Doc. 12).

Rule 41 provides:

...the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a


motion for summary judgment; or  
(ii) a stipulation of dismissal signed by all parties who have appeared.

FED. R. CIV. P. 41(a)(1)(A). Importantly, a motion to dismiss under Rule 12(b)(6) is neither an answer nor a motion for summary judgment. See In re Bath & Kitchen Fixtures Antitrust Litig., 535 F.3d 161, 166 (3d Cir. 2008). The effect of a filing under Rule 41(a)(1)(A)(i) “is automatic: the defendant does not file a response, and no order of the district court is needed to end the action. Second, the notice results in a dismissal without prejudice.... Id. (explaining that until a suit has reached the “point of no return”, which occurs when the defendant has served either an answer or a summary judgment motion, “dismissal is automatic and immediate -- the right of a plaintiff is ‘unfettered’”) (internal citations omitted).

Defendants had filed neither an answer to the amended complaint nor a motion for summary judgment at the time Plaintiff filed his notice of voluntary dismissal. Accordingly, the case will be dismissed without prejudice.

A separate Order will be issued.

Date: October 31, 2012

  
United States District Judge